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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 191

JAMES FRANCIS,

Petitioner,

AGAINST

FREDERIC A. CRAFTS,

Respondent.

REPLY BRIEF FOR PETITIONER.

I.

As to the Facts as Set Forth by the Respondent.

The Bill of Complaint asserts that the Petitioner was committed to a penal institution without notice and hearing (R. 4). The allegations in the Bill of Complaint are before the Court on motions to dismiss and for summary judgment.

Sprague v. *Vogt*, 150 F. (2d) 265

The District Court found as conclusions of fact and findings of local law that the petitioner was committed to a penal institution without notice, hearing or opportunity to defend; *that a judicial determination was required and that there was no such determination;* and that the proceedings violated the petitioner's rights under the Constitution and laws of the United States. (R. 25 paragraph 2 through R. 26 paragraph 1).

The decisions of the Trial Court on questions of local law and fact are binding on the Appellate Court unless plainly wrong.

Russell v. *Turner,* 148 F. (2d) 562

The Massachusetts statutes and decisions are in accord.

Massachusetts General Laws (Ter. Ed.) Chapter 123, *Sections* 21, 45, 46, 47, and 113-122; *Chapter* 127, *Sections* 11A, 117, 128, 130, 132 and 134.

Petition of Commissioner of Correction, 324 Mass. 535

The application and commitment papers referred to the petitioner as *the defendant,* these papers were obtained from the *Department of Correction* and were directed to officers authorized to serve *criminal process* (R. 14-18).

Petition of O'Leary, 325 Mass. 179.

The respondent's assertion that the petitioner's mother was present and assented is based on *information and belief* (R. 12). It neither appears on the record of the commitment contained in the respondent's exhibits nor could the respondent affirmatively state it as a fact in his affidavit.

An affidavit based on information and belief is inadmissable.

Jameson v. *Jameson,* 176 F. (2d) 58

Apparently the Circuit Court was more impressed by the respondent's characterizations of what he did than was the District Court. The Circuit Court's unwarranted disregard of the District Court's findings is another ground which the petitioner advances for granting the Writ. On the facts the petitioner contends that there is no immunity

in the case at bar and that judges are amenable to the provisions of the Civil Rights Act.

II.

As to the Respondent's contention that applicable cases of this Court are in accord.

The petitioner in his brief has asserted that the applicable decisions of this Court are probably in conflict with the decision of the Court of Appeals. It is submitted that the respondent has not met this contention.

The case of *Tenney* v. *Brandhove,* 341 U.S. 367 does not preclude the petitioner but supports his contention. The petitioner will expound this point more fully if and when Certiorari is granted but for the purposes of his present contentions submits;

a.) The ratio decidendi behind the Tenney decision was that a state legislator will be immune if he acts within his legitimate authority; *but not if he exceeds it.* Thus, a state legislator who deprives a person of a Federal Right in pursuance of a legitimate exercise of the legislative investigatory power is immune, *but a legislator who deprives one of his Federal Rights by exceeding his legitimate authority will be liable.*

The petitioner submits that this respondent was not engaged in a "legitimate" exercise of his judicial power but was acting "illegitimately" in that he did not invoke the necessary constitutional prerequisites in the exercise of his judicial power which were necessary to confer lawful jurisdiction upon him to act; but that he acted arbitrarily, summarily, and without regard to these requirements; thereby acting in *direct violation* of both federal and state law. In other words the respondent was engaged in a wrongful

exercise of power, an abuse of authority; — not a lawful exercise of power.*

b.) The Tenney Case involved State Legislators, not judges. This distinction is important in that this Court has already ruled on judicial immunity under a federal statute. See: *Ex Parte Virginia,* 100 U.S. 339. See also: *Shelley* v. *Kraemer,* 334 U.S. 1.

c.) The Tenney Case involved a peculiar factual situation and was decided on the basis of those facts and those facts alone. The facts in the case at bar are clearly distinguishable and present a situation which the Tenney Case recognized as one imposing liability.

d.) The Tenney Case is, in reality, the converse of *Picking* v. *Penn R.R. Co.,* 151 F. (2d) 240, 152 F. (2d) 753, on which petitioner relies. In Picking it was held that state judges are liable *to the extent indicated by the statute;* i.e. *to the extent they misuse, abuse, or exceed their legitimate authority.* Tenney on the other hand held that state legis-

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*Attention is directed to the opinion of the District Court in this regard: *Record, page 26, line 1.*

"Before taking action under #116, the judge was required not only to inquire into his mental state, but also to find that he had engaged in such wrongful conduct as to make him no longer a proper subject of a school for the feebleminded. A judicial determination was required that in addition to being mentally defective he was also a delinquent, a wrongdoer. The order for committal bears out what was done."

Record, page 25, line 15.

"This was done without notice to Francis and without giving him any opportunity to be heard. Such a proceeding lacked the essential elements of due process . . . (citations) . . . Such a deprivation of personal liberty without due process of law was a violation of the rights of Francis under the Fourteenth Amendment."

lators are immune under this statute *to the extent they act within their legitimate authority.*

Thus it can be seen that petitioner's contention is based on what the Tenney case implied; that there is liability for an illegitimate exercise of power.

The other cases cited by the respondent do not contradict the petitioner's contentions in this regard. Neither *Alzua* v. *Johnson,* 231 U.S. 106 nor *Bradley* v. *Fisher,* 13 Wall 335 involved the Civil Rights Act or a state judge violating a federal statute.

Nor do any of the other cases cited by the respondent contradict this rule.

III.

As to whether the decision of the Third Circuit is controlling.

Picking v. *Penn R.R. Co.,* supra, is an affirmative holding by another Circuit Court to the effect that state judicial officers are amenable to the provisions of the Civil Rights Acts. *Tenney* v. *Brandhove, supra,* rather than overruling this case, impliedly affirms its holding.

IV.

As to whether the Petitioner was deprived of his Federal Rights.

This is amply illustrated in the decision of the District Court (R. 25, 26).

CONCLUSION.

The respondent has failed to show why Certiorari should not be granted. This case presents more than one ground for granting the Writ. There are conflicting Circuit Court

opinions; the Circuit Court's decision conflicts with applicable decisions of this Court; there are important questions of federal law which should be settled by this Court; and the Circuit Court has departed and sanctioned the District Court's departure from the accepted and usual course of Judicial proceedings.

It is accordingly submitted that the Petition for Writ of Certiorari in this case be granted.

Respectfully Submitted,

Isadore H. Y. Muchnick,
Attorney for Petitioner.

ERRATA.

The original brief of the petitioner should be amended as follows:

1. Page 3, paragraph 3, line 4 . . . .

   Delete the word "despite" and substitute the words "because of".

2. Page 8, ...

   Strike the citation:

   "United States v. *Williams,* 341 U.S. 70"

   and substitute:

   "United States v. *Harris,* 106 U.S. 629"